

REMARKS

The present response is to the Office Action mailed in the above-referenced case on July 10, 2006. Claims 1-20 have been previously cancelled, 32-36 have been previously cancelled as drawn to a non-elected invention, and claims 21-31 are cancelled in this response in favor of newly added claims 37-42.

In the present action claims 21, 26, and 29-31 are rejected under 35 U.S.C. Section 112, first paragraph, as failing to comply with the written description requirement. In response the applicant agrees that some of the descriptive terms used in the claims are not used in the specification, and in the new claims added, every term is taken directly from the specification; so the 112 rejection should be withdrawn.

Also in the present action claims 21, 23, 25, and 27-28 are rejected under 35 U.S.C 102(b) over Valenz, US 6324800, hereinafter Valenz. Further, claims 22, 24, and 26 are rejected under 35 U.S.C. 103(a) as obvious over the single reference Valenz.

Applicant has carefully studied the teachings of the Valenz reference cited and applied by the Examiner, and the Examiner's rejections and statements of the instant Office Action. In response the applicant has entered new claims 37-42 to overcome the 112 rejections and to distinguish unarguably over Valenz. The applicant states above that all of the terms in the newlay added claims are drawn directly from the as-filed specification, and if the Examiner alleges otherwise, the applicant's representative will be glad to point out exactly where in the specification any disputed term appears.

The applicant's undersigned agent and the Examiner has a short discussion of the claims on the merits recently, and the agent pointed out the importance of the below-ground disposition for the present invention, which is nowhere treated in the reference Valenz, in spite of the Examiner's contention in the action that the apparatus of Valenz

was capable of being formed below ground. The applicant rather contends that the problem and purpose should be shown in Valenz for supposing that the Valenz apparatus might be used below ground, as a motivation for using the reference against applicant's claims. Valenz teaches very clearly that the apparatus is a support base for distributing a load over a contact surface, which is quite clearly a flat surface, as shown in every drawing and every description in the reference.

Further to Valenz, the applicant now claims, using language directly from applicant's specification, that the body, which is buried below ground, is made of resilient and elastic rubber-like material. The material of Valenz is described clearly as being a variety of high-strength low weight polymers with or without fillers or fiber reinforcement. Also that "A preferred low cost material is high density polyethylene." There is absolutely nothing in the Valenz teaching to support that the material might be resilient and elastic rubber-like material. In fact, were it so, the base of Valenz would not function for the intended purpose.

So, new claim 37 is clearly patentable over Valenz. Therefore claims 38-42 are patentable at least as depended from a patentable claim. Further claim 38 is patentable on its merits, as Valenz nowhere teaches rubber or recycled rubber. Claim 39 is patentable on its merits, because the shape claimed is nowhere described in Valenz. Claim 40 is patentable on its merits as Valenz does not teach a material particulate in form and derived from recycled tires. Claim 41 is patentable on its merits as Valenz does not teach any such engaging members as claimed, and since the footing of Valence is not buried, there would be no motivation whatever to attribute ant such limitation to Valence.

As all of the claims now standing for examination as argued above have been shown to be patentable over the art of record, applicant respectfully requests reconsideration and that the present case be passed quickly to issue. If there are any time extensions due beyond any extension requested and paid with this amendment, such extensions are hereby requested. If there are any fees due beyond any fees paid with the present amendment, such fees are authorized to be deducted from deposit account 50-0534.

Respectfully Submitted,
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